



REPLY TO DES MOINES OFFICE

August 11, 2010

**VIA OVERNIGHT MAIL**

Office of Consumer Information & Insurance Oversight  
Department of Health & Human Services  
Attention: OCHIO-9991-IFC  
Mail Stop C4-26-05  
7500 Security Blvd  
Baltimore, MD 21244-1850

**Re: OCHIO-9991-IFC  
Comments to Interim Final Rules for Group Health Plans &  
Health Insurance Coverage Relating to Status as a Grandfathered  
Plan Under the Patient Protection & Affordable Care Act**

We represent the Iowa Bankers Benefit Plan, a self-insured multiple employer welfare arrangement (“MEWA”) that provides health benefits to employees of Iowa banks and related organizations (the “Plan”). On behalf of the Plan, we appreciate the opportunity to comment on the Interim Final Rules regarding grandfathered plans under the Patient Protection & Affordable Care Act.

Established in 1978, the Plan has provided affordable health insurance to Iowans for over thirty years. The Plan currently has 418 participating employers and insures approximately 26,000 participants. The Plan’s unique structure allows it to offer participating employers a choice of seven different benefit plans at extremely competitive rates. As a self-insured MEWA and tax-exempt VEBA, Plan participants are protected by a number of federal and state law protections, including restrictions on administrative fees and state benefit mandates. The Plan is subject to the regulatory oversight of the Iowa Insurance Commissioner, the United States Department of Labor and the Internal Revenue Service.

As a self-insured MEWA, the Plan is responsible for implementing the provisions of the Patient Protection & Affordable Care Act. Since some of these provisions do not apply to grandfathered plans, the determination of

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whether the Plan's benefit packages are "grandfathered" is extremely important to the Plan's continued compliance with federal law. We are concerned by the Interim Final Rules' failure to address how the grandfathered plan rules apply to MEWAs. Specifically, we believe the Rules must address the issues outlined below.

1. **Employer Contribution Levels.** It is unclear in the Interim Final Rules how one employer's decrease of contribution levels would impact the Plan and the other participating employers. If one employer decreases its contributions toward employee premiums by more than the allowed percentage to maintain grandfathered status, how is the Plan affected? Is the Plan required to offer that employer a non-grandfathered benefit plan package? Does that employer's conduct impact the grandfathered status of a benefit plan package made available to other participating employers in the Plan? What if the employer fails to disclose to the Plan that the employer has significantly decreased its contributions toward employee premiums? Who is ultimately liable for the failure to comply with the Affordable Care Act provisions applicable to non-grandfathered plans?

2. **Changing or Adding Benefit Packages.** The Plan currently offers seven benefit packages. It is not uncommon for a participating employer to change the benefit packages it offers to employees or add a new benefit package. It is unclear in the Interim Final Rules how an employer's addition of a benefit package or changing benefit packages would impact the Plan and other participating employers. If an employer wants to add a new benefit package, does that jeopardize the Plan's grandfathered status or the grandfathered status of that benefit package? Because it's a new benefit package for the employer, is that benefit package considered a "non-grandfathered plan" that must comply with the Affordable Care Act provisions applicable to non-grandfathered plans? If the employer completely changes the benefit packages it offers, how does that impact the Plan, that employer and the other participating employers?

3. **New Employers.** Each year the Plan has new employers enrolling in the Plan. It is unclear in the Interim Final Rules how a new employer will impact the Plan or how the Interim Final Rules will apply to this new employer. The Interim Final Rules state that a change in carriers will result in a loss of grandfathered status. If an employer leaves its carrier to join the Plan, must that employer be offered a non-grandfathered benefit package? How does the addition of a new employer impact the Plan and the other participating employers?

4. **Plan Year.** The effective date of many of the Affordable Care Act's provisions is tied to the plan year. To date, neither the Interim Final Rules nor any of the other rules promulgated in response to the Affordable Care Act have addressed the determination of the plan year in the context of a MEWA. We believe the plan year should be the plan year of the MEWA

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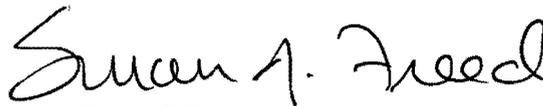
as indicated in its plan document and reported in its annual reports. We believe this needs to be clarified, however, as participating employers in a MEWA may file a Form 5500 and report a different plan year.

The failure of the Interim Final Rules to address MEWAs is extremely problematic as it forces the Plan and other MEWAs to either forfeit their grandfathered status immediately or to freeze the Plan completely allowing no employer changes to contribution levels or benefit packages and denying enrollment to new employers. We urge Health & Human Services, the Department of Labor and the Department of Treasury to address MEWAs in the Final Rules and how the grandfather rules apply to them.

Thank you for the opportunity to comment on this important issue.

Very truly yours,

DAVIS, BROWN, KOEHN, SHORS & ROBERTS, P.C.

  
Susan J. Freed